

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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YVROSE JEAN-BAPTISTE,

Civil Action No.: 07CV3535  
(FB)(CLP)DECLARATION OF  
DAVID C. WIMS

-against-

NYC DEPARTMENT OF EDUCATION,  
DINA KOSKI, DEBRA GERSHMAN,

Defendants.

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**DAVID C. WIMS**, declares under penalty of perjury:

1. I am Plaintiff's counsel in the instant action, and am admitted to practice before this Court.
2. I am fully familiar with the facts and circumstances surrounding this matter, and submit this declaration in opposition to Defendants' motion for summary judgment.
3. This is an action for damages for disparate treatment, hostile work environment and retaliatory employment discrimination, pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"); 42 U.S.C. 1981 and 1983; the New York Executive Law and the New York City Administrative Code 8-107; by a former employee of defendants.
4. The complaint was filed on 08/23/07 and amended on 01/24/08.

5. Defendants answered on 03/06/08, and discovery was had.
6. Defendants now move for summary judgment alleging *res judicata*, *inter alia*.
7. Defendants' motion should be denied in its entirety because *res judicata* is not applicable to the instant case, and plaintiff has stated a *prima facie* case of both discrimination and retaliation. In addition, there are questions of fact for a jury such as whether or not defendants' acts were retaliation for filing the instant action.

Dated: Brooklyn, New York

July 23, 2009



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